

BOARD OF APPEALS CASE NO. 5303

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BEFORE THE

APPLICANTS: Thomas & Cheryl Fidler

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ZONING HEARING EXAMINER

**REQUEST: Variance to allow an in-ground pool
with decking & areaway within the required setback;
2428 Maxa Meadows Lane, Forest Hill**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 10/16/02 & 10/23/02

HEARING DATE: December 16, 2002

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Record: 10/18/02 & 10/25/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Thomas L. and Cheryl A. Fidler, are requesting a variance, pursuant to Section 267-46.1B(5)(a), of the Harford County Code, to allow an in-ground pool with decking and existing areaway within the required 100 foot Agricultural setback from the property boundaries of a CDS Development in an RR District.

The subject parcel is located at 2428 Maxa Meadows Lane and is more particularly identified on Tax Map 33, Grid 3E, Parcel 461, Lot 43. The subject parcel consists of 1.9961 acres, is zoned RR/Rural Residential and is entirely within the Third Election District.

Mr. Thomas Fidler appeared and testified that he and his family plan to construct a pool to the rear of the house. The parcel is a panhandle lot and, although it consists of nearly 2 acres, the building envelope is restricted because of a 100-foot agricultural setback bordering north, south and west of the parcel. Additionally, the septic area is split (see Attachment 3), further reducing the area available for such an in-ground pool. According to the witness, placement of the pool further north on the rear portion of the parcel would place the pool in an area not encroaching into the rear yard setback but, this is an area of sloping topography that, if used for the pool, would require a rather substantial retaining wall, creating an economic burden to the owner. The Applicant described the slope as a 6 to 8 foot drop in elevation north to south in the rear of his property. The Applicant pointed out that the house was centered on the parcel in order to comply with all of the setback restrictions and that this placement, the setback requirements, the septic reserve area split placement and associated setbacks all combine to create a unique property that justifies the request for variance.

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Mr. Fidler stated that existing foliage already obscures the view of the rear of his yard from adjacent property owners but he proposes additional plantings of Leland Cypress, evergreens and ornamental trees along a 3-4 foot berm to further reduce visibility of the pool from adjacent properties. The witness described the pool as 25 feet by 45 feet in length with a depth ranging from 3 to 6 feet. There are no diving boards or lighting proposed. Lastly, the witness pointed out that the national Spa and Pool Institute and the national Construction and Design Association have recommended that an in ground pool like this not be placed within 20 feet of the foundation of a newly constructed home. Damage to the home's foundation and the pool can result. The Applicant has placed the pool in an area representing the minimum encroachment into the setbacks while maintaining the nationally recommended design requirements. As a result, the southwest portion of the pool will encroach into the setback 29 feet and the fence by 42 feet. The Applicant felt that no adverse impacts would result from the minor encroachment.

Mr. Anthony McClune appeared as representative of the Department of Planning and Zoning. The Department finds the subject property unique for all of the reasons discussed by the Applicant. The lot is a panhandle; it is rolling with fairly steep slopes in the rear; it has significant setback restrictions not normally associated with such large lots. Mr. McClune also said that the Code allows the 100-foot setback to be reduced to 50 feet if there is existing forest buffer that will remain after construction. Although there will not be 50 feet of forested buffer, there will be significant landscaping that, in Mr. McClune's opinion as an expert planner, would be sufficient to satisfy the requirements of the Code to allow reduction of the buffer. Mr. McClune stated that the proposed location was the best one for the pool, fence and decking and that the proposed pool was much like existing pools already built or planned in this neighborhood. Mr. McClune concluded that approval of the request would be consistent with good planning and zoning principles and practices.

No persons appeared in opposition to the request.

CONCLUSION:

The Applicants, are requesting a variance, pursuant to Section 267-46.1B(5)(a) of the Harford County Code, to allow an in-ground pool with decking and existing areaway within the required 100 foot Agricultural setback from the property boundaries of a CDS Development in an RR District.

Harford County Code Section 267-46.1B(5)(a) provides:

“Conservation development standards (CDS).

B. Design standards.

(5) Setbacks.

- (a) A minimum one hundred (100) foot setback shall be established along existing public roads (measured from the edge of the right-of-way) and along the adjacent property boundaries, and waterways. This setback may be reduced to fifty (50) feet from the edge of the right-of-way and along the adjacent property boundary if the area within the fifty (50) feet contains existing forest and that forest is retained and designated as an undisturbed forest buffer area and, if necessary supplemental landscaping is provided to adequately screen the proposed development from the public road. Lots may be located within the fifty (50) foot setback provided that no structures are located within this area.”

The Harford County Code, pursuant to Section 267-11, permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

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The Hearing Examiner finds that the Applicant has justified his request for a variance. The property is uniquely configured and has sloping topography in the only area where a pool could be constructed. The encroachment requested is the minimum allowing for the design standards recommended by two nationally recognized organizations involved in pool design standards. The Code allows a 50% reduction of the setback when forest buffer is existing and it is agreed that such buffer will remain. In this case, landscaping exists and additional forestation is proposed. Pools are normally allowed homeowner's in Harford County and the proposed pool is consistent in type and size with other pools commonly found in Harford County and in this particular neighborhood. The proposal is consistent with good planning and zoning principles and practices, is consistent with sound engineering principles and can be constructed in a manner that does not result in adverse impacts to adjoining property owners. Because the Code allows a 50% reduction of the buffer, a reduction in this case of less than 50% of the required setback should not materially impair the purposes of the Code.

The Hearing Examiner, for the foregoing reasons, recommends approval of the request subject to the following conditions:

1. The Applicant submit to the Department of Planning and Zoning for its review and approval a final landscaping plan substantially the same as that submitted with the application in this Appeal.
2. The Applicants obtain any and all necessary permits and inspections.
3. No further reductions or encroachments related to these setbacks shall be allowed.

Date FEBRUARY 16, 2003

William F. Casey
Zoning Hearing Examiner